

Defendants are not entitled to be shielded from liability in their individual capacities, or official capacities

Section 1983 allows damages to be assessed against any "person" who "under color of state law" deprives someone of federal constitutional rights. All government employees are "persons" under Section 1983 and can be sued for everything they do at work that violates clearly established constitutional rights. Hager v. Metro, 502 U.S. 21 (1991). Additionally, plaintiff seeks injunctive relief requiring prison officials to use available inmate classification information and procedures to predict compatibility of incoming inmates for double celling because current random assignment of inmates substantially increase risk of violence in violation of the Eighth Amendment (ED D.I. 9 and D.I. 2).

#18. Requesting an injunction, or declaratory judgment, state officials can be sued in their official capacities. Will v. Michigan Department of State Police. The grant of injunctive relief is an extraordinary remedy, which should be granted only in limited circumstances. Air freight co. v. C.R. Air Freight, Inc., 882 F.2d 797, 800 (3d Cir. 1989) (Quinton's Eagle Truck Center, Inc. v. General Motors Corp., 847 F.2d 200, 102 (3d Cir. 1988)). In ruling on a preliminary injunction, this court must consider 1) the likelihood of success on the merits, 2) the extent to which the plaintiff is being irreparably harmed by the conduct complained of, 3) the extent to which the defendants will suffer irreparable harm if the requested relief is granted; and 4) the public interest. See Cheat Ocean Action v. York, 57 F.3d 328, 331 (3d Cir. 1995). An injunction should only issue if all four factors favor injunctive relief. See S.E.C. Corp. v. Jiffy Lube Intern., Inc., 968 F.2d 371, 374 (3d Cir. 1992).

As the Supreme Court has explained. Qualified Immunity seek to ensure that Defendants reasonable can participate when their conduct may give rise to liability. By attaching liability only if the contours of the right (violated) are sufficiently clear that a reasonable official would understand that what he is doing violates that right United States v. Gammie 520 U.S. 259, 270 (1997) this is not to say that an officials action is protected by qualified Immunity, unless the very action in question has been held unlawful; but it is to say that in the court of premises that the unlawfulness must be apparent. Anderson v. Gagnon, 483 U.S. 635, 640 (1987).

The instant case. It was apparent by January 20, 2004 that the Eighth Amendment prohibited defendant from subjecting the Plaintiff to Severe Emotional Distress, and mental anguish fear, shock, humiliation or mortification and cruel and unusual punishment. By being deliberately indifferent to a substantial risk of serious harm to a inmate thus being Deliberately indifferent to inmates health and safety in violation of the Eighth Amendment. Moreover Plaintiff claim against Defendants in their Individual Capacities made clear (ID. DE 18 At 5).

have gone undisputed. Thus Defendants claim of Qualified Immunity must fail and The Plaintiff undisputed claim against Defendants in their Individual Capacities must succeed.

BECAUSE they waive this Defence by failing to assert it in their Motion to Dismiss.

Plaintiff claims he was denied a constitutional civilized measure
of life's necessities "reasonable safety."

To act with deliberate indifference, a state actor must "know[] of and
disregard[] an excessive risk to [the victim's] health or safety." Ewold v. C.I. 06

Brunswick, 257 F.3d 492, 513 (6th Cir. 2002) (quoting Fernier v. Brennan, 511 U.S. 825, 837, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994)) (internal quotation omitted). The state actor's
actual knowledge is critical to the inquiry. A state actor's failure to alleviate "a significant
risk that he should have perceived but did not," while "no cause for commendation," does not
rise to the level of deliberate indifference. Fernier, 511 U.S. at 837, 114 S.Ct. 1970.

Under the first prong, the defendants engaged in constitutionally impermissible conduct
See, e.g., SAUCIER, 533 U.S. at 201, 121 S.Ct. 2151. Taken in the light most
favorable to the party asserting the injury, do the facts alleged show the officers
conduct violated a constitutional right?.... (if no constitutional right would have
been violated were the allegations established, there is no necessity for further inquiry
concerning qualified immunity."); Accord Roe v. Tex. Dept. of Protective and Regulatory Serv.,
299 F.3d 395, 2002 WL 1575250, at *3 (5th Cir. July 17, 2002). Prison condition
may be "restrictive and even harsh" Rhodes, Supra, 452 U.S., at 347, 101 S.Ct. at 2389
but gratuitously allowing the beating or rape of one prisoner by another serves no "legitimate
penological objectives," Hudson v. Palmer, Supra 468 U.S., at 548, 104 S.Ct., at 3211 (Stevens, J.
concurring with in part and dissenting in part). Any more than it squares with "evolving standard
of decency," Estelle v. Gamble, 429 U.S., at 102, 97 S.Ct., at 290 (quoting Trot v. Dulles, 356
U.S. 86, 101, 78 S.Ct. 590, 598, 2 L.Ed.2d 630 (1958) (plurality opinion)). Being violently ~~assassinated~~
in prison is simply not "part of the penalty that criminal offenders pay for their
offences against society." Rhodes Supra, 452 U.S., at 347 101 S.Ct., at 2399

Under the requirements for injunctive relief Plaintiff has demonstrated
a likelihood to succeed on the merits

Plaintiff concedes in his complaint that he was placed in a cell with a violent inmate for over three months, thereby failing to protect him from an assault by Anthony Coffield. The Plaintiff was assaulted inside B-C-10 on 6-6-04. Plaintiff requested to be relocated to another cell, due to threats of bodily harm and elder alteration, but the request was unanswered by the Defendant and as a result, because plaintiff was not moved he suffered a permanent injury. The threats on plaintiff's well-being were received and relayed back to plaintiff, denying him protection from assault made obvious to Defendants by way of Actual Knowledge. Defendant did absolutely nothing but perfunctorily deny Plaintiff's request without any investigation. "fact sheet facing Deputy Warden re-opened Plaintiff's request for protection and order an investigation in regard to my letter to you demonstrates 'no initial investigation was conducted,' on the face of the complaint, Plaintiff was shown a deliberate indifference on the part of Defendants to substantial risk of serious harm to an inmate."

Conclusion

2. The Eighth Amendment to the United States Constitution guarantees that no prisoner shall be subjected to cruel and unusual punishment. The Constitution's prohibition against cruel and unusual punishment not only prohibits certain kinds of physical punishment, such as torture, but embodies broad and idealistic concepts of dignity, civilized standards, humanity and decency. *Estelle v. Gamble*, 429 U.S. 97, 97, 86 Af. 285, Af (03.). The Eighth Amendment requires that prison officials, under the circumstances presented herein, must not be deliberately indifferent to a prisoner's need for protection against physical assault. A prisoner who is deprived of such protection because of a prison official's deliberate indifference to a physical assault has suffered a violation of his constitutional rights as guaranteed by the Eighth Amendment.

3. To be cruel and unusual punishment, conduct which does not purport to be punishment at all must involve more than ordinary lack of care for the prisoner's interest or safety. If it is deliberate or wanton, not inadvertence or error in good faith, that characterizes the conduct prohibited by the cruel and unusual punishment clause. *Whitley v. Albers*, 475 U.S. 312, 106 S. Ct. 1078, Af 319.)

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James Hall
 James Hall Pro Se
 181 Rockwell Rd. S.W.Va.
 Dec 1997

12-18-06
 Date:

EXHIBIT A

Project
Business

Declaration under penalty of perjury of
Charles Daley, 472644, being competent to make
this declaration and having personal knowledge of the
matters stated therein, declares pursuant to 28 U.S.C. § 1746:

1. I was James's next door neighbor at the time of the incident. I heard him and his cellly get into another of their many arguments around 11:00 AM one morning. This argument was different because James's cellly started to threaten him with violence. I did hear a fight begin and after a few minutes the doors opened for lunch. James's cellly then came out of the cell and started a bigger fight that was muslim's versus non-muslim's, guys had mop fingers and brooms. The police eventually saw what was going on after a good five minutes of fighting. They took all muslims to the SHU and the incident was over.

9-29-05

Declaration under penalty of perjury of
Ulyses S. Davis Jr., 00229889, being competent to make
this declaration and having personal knowledge of the matter
stated therein, declares PURSUANT to 28 U.S.C. § 1746:

I became friendly with Mr. James Hall after playing a few games of chess with him and leading up to the day he got into a fight with his cell mate we talked about how his cell mate kept trying to make Mr. Hall fight him and as we talked about what he could do about the matter I said he should use the chain of command to be moved out of the cell because his hand was hurt and he did so, but they would not move him and in June he got into a fight with his cell mate and his tooth was knocked out and a few other guys tried to jump on him and his cell mate punched another inmate in the face as well before his cell mate was put in the SHU.

Ulyses S. Davis Jr.

Declaration under penalty of perjury

#277704
Glen Smith , being compelled to make this Declaration and having personal knowledge of the matters stated therein, declares pursuant to 28 U.S.C. § 1746

1) On the day the fight happen Jimmy was angry & upset at his cellmate. He stated that he was being given a lot of hassle & ~~problems~~ problems at lunch time that day. Jimmy was attacked by his cellmate. I heard the fight & witnessed the end and heard the cellmate say yea I got that faggot.

Pursuant to 28 U.S.C. § 1746 I declare under penalty of perjury that the foregoing is true and correct Executed on 9/30/05

Declaration under penalty of perjury of James Hall,
OC167581, being Competent to make this declaration and
Having personal knowledge of the matter stated herein, deposes
pursuant to 28 U.S.C. § 1746:

On 3-30-04 My Colle Anthony Coffield was
threatening me, and eventually physical assaulted me (by
pointing his finger into my forehead in a aggressive manner
in anger) while Coffield was intimidating me trying
to get me to fight him. Once he even spit in my face
The door open and I went straight to the fire
officer, in compliance with the rule (ie chain of command).
Affiant was directed by C/o Wilson to go back to
(MLU) SGT Sullivan and asked to be mind because of
the confrontation that just occurred. Affiant was told
by SGT Sullivan This is life or death, in keeping it real
you have to fight or Sighnon. ID. commitment Exhibit

Declaration under penalty of perjury of
James Hall, 00167581, Being Competent to make this
Declaration and Having personal knowledge of the matters
stated. Therein, declares pursuant to 28 U.S.C. § 1746:

Affiant Asserts the following:

ON 6-6-04 I was violently attacked by Anthony Coffield and
other members of a collective group (I.C. Muslims) after the attack
Affiant and another inmate was escorted out of CMHUS B-Tier into a
corridor where Affiant was questioned by Lt. Boon in regards to the incident
that just taken place. Affiant confronted Lt. Boon about matters forwarded
to him from Clyde D. Sagers in regard to the previously well documented
threats on Affiant person. Lt. Boon stated I needed ya'll to fight in order to
Move Affiant's Aggressor. Moment before this admission Affiant "In Discoss"
explained to Lt. Boon that I wrote major Holman and all ya'll telling
ya'll that my cellie was threatening Baiting him to me everyday and now
I'm starting here Bleeding and he knocked my damn tools out and all
his Muslim boy's jumped me and my friend help get them off me
if ya'll would have moved me like I asked ya'll too none of
this [choose words] would of happened. There was two
other officer's present during this interview one officer's name is Sgt
Abernathy other officer Name unknown at this time

James Hall

12-5-05

EXHIBIT B



STATE OF DELAWARE
DEPARTMENT OF CORRECTION
OFFICE OF THE DEPUTY WARDEN
DELAWARE CORRECTIONAL CENTER
1181 Paddock Road
SMYRNA, DELAWARE 19977
Telephone: (302) 653-9261
Fax: (302) 659-6668

Clyde D. Sagers

MEMORANDUM

TO: IM James Hall
SBI# 167581
MHU 23 BL10B

FROM: Clyde D. Sagers
Acting Deputy Warden I

DATE: May 17, 2004

RE: Letter

A handwritten signature in black ink that reads "Clyde D. Sagers". The signature is fluid and cursive, with "Clyde" and "D." being more stylized.

I have received your letter in reference to your cellmate. I have forwarded your letter to Lieutenant Boone for his investigation.

LAM/dc

Attachment

cc: Lt. Boone
Inmate File

Certificate of Service

I, James Hall, hereby certify that I have served a true and correct cop(ies) of the attached: (2) Plaintiff's reply to Defendant's Motion to Dismiss upon the following parties/person (s):

TO: Mrs Lisa Beach
820 N. French Street, 6th
Floor Wilmington, DE 19801

TO: _____

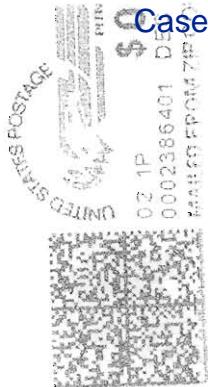
TO: _____

TO: _____

BY PLACING SAME IN A SEALED ENVELOPE and depositing same in the United States Mail at the Delaware Correctional Center, Smyrna, DE 19977.

On this 15 day of December, 2005

James Hall



James Kelly pro se w.l.g
Delaware Construction Center
1181 Parkside Dr. Smyrna DE
19971

*Clerk of the Court
United States District Court
894 N. King Street, locker box 158
Wilmington, DE 19801*

